

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

MAUREEN GARFOLO,

Plaintiff,

v.

GIANT EAGLE,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

NOW COMES Plaintiff, Maureen Garfola, by and through her attorney, Christi Wallace, Esquire, and files this Complaint alleging as follows:

I. Nature of the Action

1. Plaintiff brings this Complaint to recover damages under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§621-634 and the Pennsylvania Human Relations Act (PHRA), 43 P.S. §951-963. Plaintiff is sixty-one years old and was terminated because of her age in violation of 29 U.S.C. §623.

II. Jurisdiction and Venue

2. This action arises under ADEA, 29 U.S.C. §§ 621-634. This Court has jurisdiction over Plaintiff's discrimination claims pursuant to 28 U.S.C. § 1331.

3. This Court has supplemental jurisdiction over Plaintiff's discrimination claims pursuant to 28 U.S.C. § 1367(a).

4. Plaintiff is a resident and citizen of Pennsylvania, a substantial part of the events or omissions giving rise to the claims occurred in Western Pennsylvania, and, therefore, this action is within the jurisdiction of the United States District Court for the Western District of Pennsylvania and the venue is proper pursuant to 28 U.S.C. § 1391(b).

III. Parties

5. Plaintiff, Maureen Garfalo (“Plaintiff”), is an adult individual residing at 1907 Crosby Avenue, Pittsburgh, PA 15216.

6. Defendant, Giant Eagle (“Defendant”), is a business with a location at 101 Kappa Drive, Pittsburgh, PA 15238-2809.

IV. Facts

7. Plaintiff became employed with Defendant on July 25, 2011.

8. Plaintiff held the position of Executive Chef and Food Marketing Team Leader.

9. Prior to September 5, 2015, Plaintiff had no problems at work. Plaintiff never received any sort of counseling or disciplinary actions against her.

10. On September 1, 2015, Plaintiff was working at Giant Eagle located in Moon Township, Pennsylvania.

- a. At 12PM, Plaintiff was working in the kitchen with another employee, Amanda McAleer (“Ms. McAleer”), who is much younger than Plaintiff.
- b. Shortly after 12PM, Ms. McAleer pointed to two cardboard boxes and stated, “they’re out of date.” Ms. McAleer had just finished formal training as a prepared foods team leader and was taught to discard out of date food.
- c. Plaintiff told Ms. McAleer, “well, why do you have them sitting there? Get rid of them!”

11. Four days later, on September 5, 2015, Ms. McAleer was packing food at the Grab and Go counter.

- a. It was Labor Day Weekend and the store was very busy.
- b. At 10:10AM, Ms. McAleer stopped Plaintiff and asked if she should use the expired sauce that she was previously told to discard. Plaintiff was having an extremely busy day on September 5, 2015 and told Ms. McAleer yes in the rush of the moment.
 - i. This question never should have occurred.
 - ii. Ms. McAleer was trained to discard expired food and Plaintiff explicitly told her to discard it on September 1st.
 - iii. Ms. McAleer knew the food was expired on September 1st and 5th but still insisted on using it.

12. Defendant's Policy, *see attached Exhibit A*, states that each worker is responsible for following Policy. This includes handling food. Ms. McAleer decided to use the sauce despite knowing it was expired

13. Defendant's policy also states that even if another coworker asks you to violate policy, you should refuse to do so.

- a. Plaintiff told Ms. McAleer to discard the expired sauce on September 1, 2015 as Defendant's policy dictates. Plaintiff expected Ms. McAleer to do her job pursuant to the individual responsibility policy.

14. Plaintiff worked the following two days without an issue.

15. On September 8, 2015 Plaintiff was called into a room with Spring Letsky, a Team Member Relations Specialist, and LaVon Kincaid, a Loss Prevention Representative to discuss what happened on September 5, 2015.

- a. Plaintiff promised such an error would never happen again.
- b. Plaintiff explained Ms. McAleer's involvement.
- c. Plaintiff also explained that she had previous difficulty with Ms. McAleer but was ignored.

16. Plaintiff was terminated on September 11, 2015 and Ms. McAleer was subsequently promoted to a salaried Team Leader.

V. Allegations

Count I Age Discrimination

- 17. The preceding paragraphs are incorporated herein as if set forth at length.
- 18. Plaintiff was fully qualified to perform all aspects of her job.
- 19. Plaintiff's protected class is Age.
- 20. Plaintiff was 61 years of age when terminated. Plaintiff's birthday is November 20, 1953.

21. Defendant engaged in the following unlawful discrimination in violation of the ADEA and PHRA:

- a. First, it is clear that based off the evidence, Ms. McAleer made the error on September 5, 2015.
 - i. On September 1, 2015, Plaintiff told Ms. McAleer to discard the outdated sauce. She should have done so but she did not.

- ii. On September 5, 2015, Ms. McAleer asked to use the outdated sauce that Plaintiff told her to throw out on September 1st. Plaintiff was having an extremely busy day and told Ms. McAleer yes and use the sauce in the rush of the moment.
- iii. Ms. McAleer was trained not to use expired products but nevertheless used it.
 - 1. Defendant's Policy, *Exhibit A*, is clear in stating that every employee is responsible for following the Policy. Every employee is responsible for making sure expired products are not used and/or sold. The Policy is also very clear in stating that NO ONE is authorized to allow and/or direct an employee to deviate from this Policy in any way.
 - 2. Ms. McAleer was aware of this Policy.
 - a. Ms. McAleer knew the product was expired on September 1, 2015 but still used it on September 5, 2015.
 - b. Ms. McAleer violated Policy by knowingly using expired product.
 - c. Ms. McAleer also knew that Plaintiff did not have permission to allow her to deviate from Policy and use the expired product on September 5th.
 - d. Ms. McAleer also clearly violated the Policy but was not terminated. Instead, Ms. McAleer was promoted.

iv. Second, Plaintiff was treated differently than Ms. McAleer, a much younger worker.

1. Despite the fact that Ms. McAleer violated the Policy, she was promoted to Team Leader and Plaintiff was terminated.
2. Ms. McAleer's transgressions were known to a number of team members and reported to the Preps Foods Team Leader.
3. Rather than investigate Ms. McAleer's numerous transgressions, Defendant chose to place the blame squarely on Plaintiff and promoted Ms. McAleer.

v. Plaintiff was terminated on September 11, 2015 because of her age and after facing age discrimination.

Request for Relief

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against the Defendant for the following:

- a. Loss of back wages in excess of \$48,000;
- b. Loss of future wages in excess of \$62,400;
- c. Additional punitive damages in excess of \$55,000;
- d. Plaintiff's legal fees in excess of \$25,000;
- e. Pre-judgment and continuing interest;
- f. Court costs; and
- g. Other such relief as the Court may deem just and proper.

Respectfully submitted,

Christi Wallace

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